

Calendar No. 1256

77TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ No. 1217

BOB SAMPLEY

MARCH 26 (legislative day, MARCH 5), 1942.—Ordered to be printed

Mr. ROSIER, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 2278]

The Committee on Claims, to whom was referred the bill (S. 2278) for the relief of Bob Sampley, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The bill provides for the payment of \$250 to Bob Sampley, of Forrest City, Ark., in full satisfaction of his claim against the United States for compensation for personal injuries sustained and for reimbursement of medical expenses incurred as the result of having been struck by a tin bucket thrown from an Army troop train near Madison, Ark., on June 18, 1941.

The records of the War Department show that on June 18, 1941, at about 4:25 p. m., Bob Sampley, of Forrest City, Ark., a civilian, was standing on the right-of-way of the Chicago, Rock Island & Pacific Railroad Co., on the north side of the tracks, some distance west of the depot at Madison, Ark., waiting for a west-bound troop train to pass. Although Mr. Sampley was standing on the railroad right-of-way, it would seem that his status is not to be considered as that of a trespasser, but rather as that of an invitee, since it appears that the path he was following had been in general use for a number of years with the tacit consent of the railroad company. As the kitchen car of the troop train, which was proceeding at a speed of about 35 miles per hour, passed the point where Mr. Sampley was standing, an enlisted man on kitchen police duty in that car threw from the car door a large tin can containing a mixture of water and flour, which container struck Mr. Sampley in the face. The impact of the container made an incised wound $1\frac{1}{2}$ inches long at the upper corner of Mr. Sampley's mouth, well down to the bone, requiring four sutures, loosened two teeth, and caused an abrasion on the side of his face. He was rendered unconscious by the blow and knocked backward down a 10-foot embankment.

The train was stopped and the injured man was taken aboard and carried to Forrest City, Ark., where he was attended by Dr.

J. O. Rush, the railroad company's physician at that point. Under date of July 3, 1941, Dr. Rush reported that the cut on Mr. Sampley's lip had entirely healed, but would probably leave a scar about $1\frac{1}{2}$ to $1\frac{3}{4}$ inches long; and, at date of discharge, June 24, 1941, the teeth were still loose and there was a possibility that he would lose one of them.

It is the view of the War Department that the injuries suffered by Mr. Sampley were due to no fault or negligence on his part but rather to the fault or neglect of the train commander, in that he did not exercise proper control of his train personnel, permitting such hazards to life and property as that which resulted in this accident. The Department has no objection to the enactment of legislation compensating claimant in such amount as the Congress in its discretion may deem proper.

Claimant at the time of the accident was 27 years of age, a truck driver by occupation, married, and had two children, age 3 years and 7 months, respectively, and his wife and children are dependent upon him for support.

In view of all the circumstances the amount asked for seems reasonable, and it is accordingly recommended that the bill do pass.

The following communications are appended hereto and made a part of this report:

WAR DEPARTMENT,
Washington, March 13, 1942.

HON. PRENTISS M. BROWN,
Chairman, Committee on Claims, United States Senate.

DEAR SENATOR BROWN: The War Department will interpose no objection to the enactment of S. 2278, Seventy-seventh Congress, second session, which would pay to Bob Sampley, of Forrest City, Ark., the sum of \$250 in full satisfaction of his claim against the United States for compensation for personal injuries sustained and for reimbursement of medical expenses incurred as the result of having been struck by a tin bucket thrown from an Army troop train near Madison, Ark., on June 18, 1941.

On June 18, 1941, at about 5:25 p. m., Bob Sampley, of Forrest City, Ark., a civilian, was standing on the right-of-way of the Chicago, Rock Island & Pacific Railroad Co., on the north side of the tracks, some distance west of the depot at Madison, Ark., waiting for a west-bound troop train to pass. Although Mr. Sampley was standing on the railroad right-of-way, it would seem that his status is not to be considered as that of a trespasser, but rather as that of an invitee, since it appears that the path he was following had been in general use for a number of years with the tacit consent of the railroad company. As the kitchen car of the troop train, which was proceeding at a speed of about 35 miles per hour, passed the point where Mr. Sampley was standing, an enlisted man on kitchen police duty in that car threw from the car door a large tin can containing a mixture of water and flour, which container struck Mr. Sampley in the face.

The impact of the container made an incised wound $1\frac{1}{2}$ inches long at the upper corner of Mr. Sampley's mouth, well down to the bone, requiring four sutures, loosened two teeth, and caused an abrasion on the side of face. He was rendered unconscious by the blow and knocked backward down a 10-foot embankment.

A brakeman who was riding in the caboose of the train and who saw Mr. Sampley falling down the embankment, stopped the train, and the injured man was taken aboard and carried to Forrest City, Ark., where he was attended by Dr. J. O. Rush, the railroad company's physician at that point.

Under date of July 3, 1941, Dr. Rush reported that the cut on Mr. Sampley's lip had entirely healed, but would probably leave a scar about $1\frac{1}{2}$ to $1\frac{3}{4}$ inches long; and, at date of discharge, June 24, 1941, the teeth were still loose and there was a possibility that he would lose one of them.

In a report to the railroad company, dated June 28, 1941, Mr. Sampley stated that he was 27 years of age, a truck driver by occupation, married, and had two children, Shirley Jean and Donald, age 3 years and 7 months, respectively, and that his wife and children were dependent upon him for support. He further

stated that he had not worked since the accident, and that his average weekly earnings with his truck had netted him \$30 or \$35 a week.

Although no claim has been filed with the War Department by Mr. Sampley growing out of this accident, a claim was filed by Dr. J. O. Rush, of Forrest City, Ark., in the amount of \$12 for medical services rendered to Mr. Sampley on account of the injuries suffered by the latter.

Upon review in the War Department the claim was disapproved for the reason that there is no authority of law or appropriation available to the Department for the settlement of claims for personal injuries or expenses incident thereto arising as a result of an activity of the Army.

It is the view of the War Department that the injuries suffered by Mr. Sampley were due to no fault or negligence on his part but rather to the fault or neglect of the train commander, in that he did not exercise proper control of his train personnel, permitting such hazards to life and property as that which resulted in this accident. Therefore, while not prepared to pass upon the amount that should be granted to Mr. Sampley in the circumstances the Department will interpose no objection to the enactment of legislation compensating him in such amount as the Congress in its discretion may deem proper.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

AFFIDAVIT

STATE OF ARKANSAS,
County of St. Francis:

Bob Sampley, after being by me duly sworn, on oath states:

My name is Bob Sampley, I am of legal age, live in Forrest City, Ark. On June 18, 1941, I was in the town of Madison, Ark., at the mill of Clarke-Bernaue. My business there was to arrange to haul some wood for the company. I had seen the parties I wanted to see, and had started to the other mill, Ersekane-Williams. The two mills are about 600 yards apart and the Rock Island Railroad is about half way. I climbed the levee or embankment, which was the roadbed. When I reached the top, I looked east and saw a train approaching from that direction, going west. I stopped to let it go by. I was about 12 feet from the track. While the train was passing I was struck by a milk can that was thrown from the train. It struck me on my right cheek, or right side of my face, cutting a gash about 1½ inches in length. I was knocked unconscious. When I came to myself, I was at the office of Dr. Rush, in Forrest City. I was unable to work for over a month. I have a wife and two children. Before this accident, I was making \$6 a day. This milk can caused me to lose one of my front teeth. This scar is still on my face and will stay there throughout life.

BOB SAMPLEY.

Subscribed and sworn to before me this the 12th day of January 1942.

[SEAL]

BESSIE D. ALLEN, Notary Public.

My commission as notary public expires on the 3d day of June 1943.

AFFIDAVIT

STATE OF ARKANSAS,
County of St. Francis:

Lee Simmons, Jr., after being by me duly sworn, states on his oath:

My name is Lee Simmons, Jr., I am 23 years old, live at Madison, Ark., and work for Eraskins-Williams Co. At the time Mr. Bob Sampley was injured, June 18, 1941, I was working for Clarks-Bernauer Lumber Co. I saw Mr. Sampley when he was hurt by a milk can that was thrown from a troop train while the train was passing through Madison, Ark. I saw Mr. Sampley climb the railroad dump and look east. He saw the train coming and stopped to let it pass. As the train was passing Mr. Sampley was standing about 12 feet from the rails. Some object was thrown from the train and I saw Mr. Sampley fall. Mr. Sampley was unconscious. I saw the train stop and they put Mr. Sampley on it and carried him away.

Mr. Sampley is a truck driver, and was employed at times by the Clarke-Berneau Lumber Co.

LEE (his X mark) SIMMONS, Jr.,

Witness: R. S. ZONDRIN.

Subscribed and sworn to before me this the 12th day of January 1942.

[SEAL]

BESSIE D. ALLEN, *Notary Public*.

My commission as notary public expires on the 3d of June 1943.

AFFIDAVIT

STATE OF ARKANSAS,

County of St. Francis:

Forrest Caylor, after being by me duly sworn, states:

My name is Forrest Caylor, I live at Madison, Ark., am working for Clarke-Bernaue Lumber Co., of Madison. I am of legal age. I know Bob Sampley, Forrest City, Ark. I was present when he was struck by a 2-gallon milk bucket that was thrown from a troop train on June 18, 1941, at Madison, Ark. This train was going west and was running at a rate of 35 miles per hour. Mr. Sampley had started from Clarke-Bernaue's mill going to Ersekand-Williams' mill, a distance of about 600 yards. He had to climb a 12- or 15-foot embankment, which was the railroad bed. He was some 10 feet from the railroad. He saw the train and stopped. As the train passed, someone threw a milk can from the car. The can struck Mr. Sampley on the side of his face, cutting a gash. He was unconscious for some time afterward. Was taken to Dr. Rush, Forrest City, for treatment. He was unable to work for a month. Mr. Sampley had been employed driving a truck. The path that Mr. Sampley used in crossing the railroad is a public way used by the public.

I have no interest in this matter further than to see justice done.

FORREST CAYLOR.

Subscribed and sworn to before me this the 12th day of Jan., 1942.

[SEAL]

CLYDE BERRY, *Notary Public*.

My commission as Notary Public expires on the 1st day of April 1942.